IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.Rev.Pet.No. 3243 of 2007()

CRA.47/2007 of I ADDL.SESSIONS COURT, ERNAKULAM
CC.103/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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REVN. PETITIONER: PETITIONERS/APPELLANTS/ACCUSED NO.1 TO 3

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1. SIVAN, S/O.KANDANKORAN,
   CHELAKKATTUKARA HOUSE, VAYALODAM,
   WEST VELIYATHUNADU, KARUMALLOOR,
   ERNAKULAM DISTRICT.

2. SUDHAKARAN, S/O.KANDANKORAN,
   CHELAKKATTUKARA HOUSE, VAYALODAM,
   WEST VELIYATHUNADU, KARUMALLOOR,
   ERNAKULAM DISTRICT.

3. SUNDARAN, S/O.KANDANKORAN,
   CHELAKKATTUKARA HOUSE, VAYALODAM,
   WEST VELIYATHUNADU, KARUMALLOOR,
   ERNAKULAM DISTRICT.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA

RESPONDENTS: RESPONDENTS/COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY ITS
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. S.I. OF POLICE, REPRESENTED BY THE
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3243 OF 2007

Dated this the 6th day of September, 2007

O R D E R

The revision petitioners, 3 in number, were accused Nos.1 to 3 in C.C.No.103/2002 on the file of the JFCM-I, Aluva. They were charge sheeted by the Sub Inspector of Police, Aluva for offences punishable under sections 341, 324 and 326 read with section 34 IPC.

2. The case of the prosecution can be summarised as follows:-

On 4.5.2001 at about 7.30 p.m. near Vayalodam junction the 3 accused persons, out of their previous enmity towards PW1 and in furtherance of their common intention to attack him, wrongfully restrained him. The 2nd accused beat him on the head with with an iron rod causing an injury. When PW1 fell down, all the accused beat on different parts of his body with an iron rod causing dislocation of left hand and fracture to the 9th and 10th ribs. The accused have thereby committed the aforementioned offences.

3. On the side of the prosecution, 9 witnesses were

examined as PWs 1 to 9 and 5 documents were got marked as Exts.P1 to P5.

4. The accused denied the incriminating circumstances in the evidence for the prosecution when put to them under section 313(1)(b) Cr.P.C. and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, acquitted the accused of the offence punishable under section 326 IPC but convicted them under sections 341 and 324 read with section 34 IPC. For the conviction under section 324 IPC, they were each sentenced to undergo simple imprisonment for six months and for the conviction under section 341 IPC, they were each sentenced to undergo simple imprisonment for one month. Besides imprisonment, the revision petitioners were each directed to pay a sum of Rs.5,000/- (Rupees five thousand only) to PW1 by way of compensation. The revision petitioners preferred an appeal as Crl.Appeal No.47/07 before the Sessions Court, Ernakulam. As per judgment dated 27.7.07, that court dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioners. Hence this revision.

6. PW1 is the injured in the case. Apart from him, PWs 2, 3, 7 and 8 are the eye witnesses to the occurrence. Out of them, PW3 turned hostile to the prosecution.

7. Eventhough the learned counsel for the revision petitioners assailed the conviction recorded concurrently by the courts below, in as much as the said conviction has been entered after a careful evaluation of the oral and documentary evidence in the case, this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said findings, particularly in the absence of any infirmity in the appreciation of the evidence by the courts below. The conviction is accordingly confirmed.

8. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioners or not. The revision petitioners are brothers who had mounted an attack on PW1 presumably for the anterior trespass committed by PW1 and others in the property in question. This coupled with the fact that Raju, the person who was cited by prosecution to prove the motive was not examined and the iron rods with which PW1 was allegedly attacked had not been recovered, I am of the view that the revision petitioners do not

deserve penal servitude by way of incarceration. I am of the considered view that interests of justice will be adequately met by directing the revision petitioners to suffer imprisonment till the rising of the court for their conviction under sections 324 and 341 IPC and also by directing them to pay an enhanced amount by way of compensation. Accordingly, the sentence imposed on the revision petitioners is set aside and instead, they shall undergo imprisonment till the rising of the court for the conviction under sections 324 and 341 IPC and shall also pay a sum of Rs10,000/- (Rupees ten thousand only) each as compensation under section 357(3) Cr.P.C. The compensation shall be payable to PW1, the injured, within two months from today, failing which they shall suffer simple imprisonment for three months for each of the default. The substantive sentence of imprisonment till the rising of the court shall run concurrently.

This revision is disposed of confirming the conviction but altering the sentence as above.

(V. RAMKUMAR, JUDGE)

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